

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS
NUMBER: 96-0376 ITC
ADJUSTED GROSS INCOME TAX
FOR TAX YEAR 1993

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ISSUE

I. Adjusted Gross Income Tax - Net Operating Loss Deductions

Authority: IC 6-3-2-2.6; IRC Sections 108, 172

Taxpayer protests the denial of net operating loss deductions from Indiana adjusted gross income.

STATEMENT OF FACTS

During tax year 1992 shareholders of the taxpayer forgave a significant amount of corporate indebtedness in order to facilitate the sale of the company, which was insolvent. On its 1993 federal return, taxpayer excluded income from this discharge of indebtedness from its taxable income pursuant to Section 108 of the Internal Revenue Code. Following Section 108, taxpayer also reduced its federal operating loss for the taxable year of the discharge and the net operating loss carryover to such taxable year. Taxpayer did report such net operating losses on its Indiana tax returns.

The original Letter of Finding, denying the taxpayer's protest, was issued November 19, 1997. Taxpayer requested a rehearing which was granted on December 19, 1997. The rehearing was held October 1, 1998.

Additional information will be provided below, as necessary.

I. Adjusted Gross Income Tax - Net Operating Loss Deductions

DISCUSSION

The auditor and original Letter of Finding ruled the net operating losses which could not be taken on the federal return were also not allowable on the state return. Taxpayer urges that Indiana Code 6-3-2-2.6 applies and allows for these net operating losses to be taken in Indiana. However, IC 6-3-2-2.6 states in part:

(a) This section applies to a corporation or a nonresident person, for a particular taxable year, if the taxpayer's adjusted gross income for that taxable year is reduced because of a *deduction allowed under Section 172* of the Internal Revenue Code for a net operating loss.

Emphasis added.

Taxpayer was not allowed a deduction under Section 172 of the IRC. Section 172 provides for the net operating loss deduction. Section 108 of the IRC addresses the issue of income from the discharge or indebtedness. Section 108(b) provides:

The amount excluded from gross income...shall be applied to reduce the tax attributes of the taxpayer...in the following order: ...any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

As a result of the discharge or indebtedness, taxpayer was prohibited, under Section 108, from taking the net operating loss deductions allowed under Section 172. Indiana code section 6-3-2-2.6 requires that taxpayer's adjusted gross income be reduced by a deduction under Section 172 before it is applicable.

Taxpayer provided the Department with its 1993 federal tax returns. Taxpayer did not claim a net operating loss for that taxable year. As such, the Department finds the above-referenced statute does not apply and the taxpayer is not allowed a Section 172 deduction for purposes of the state income tax.

FINDING

Taxpayer's protest is denied. Taxpayer may not take a Section 172 deduction for a net operating loss for Indiana adjusted gross income tax purposes when such deduction was not allowed for federal income tax purposes.

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